

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:97-CR-98-01-F

UNITED STATES OF AMERICA)

v.)

EMMETT MADISON GRAHAM, JR.,)
Defendant.)

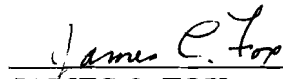
O R D E R

Emmett Graham has filed what he has styled, "Motion for Correction/Reduction of Sentence Pursuant to 18 U.S.C. § 3582(2)(2) or Rule 52(B) F.R.O. CRIM. P." [DE-256]. Therein, he contends that his sentence must be corrected so that his consecutive sentence under 18 U.S.C. § 924(c) instead runs concurrently. He relies on the interpretation of § 924(c)(1)(A)'s "except clause" in *United States v. Whitley*, 529 F.3d 150 (2d Cir. 2008).

This court is bound by the Fourth Circuit Court of Appeals' precedent in this regard, which *Whitley* itself recognizes is not in agreement with that of the Second Circuit. See *Webb v. United States*, No. 1:09CV133, No. 1:02CR51-1, 2009 WL 2399946, slip op. at *2 (M.D.N.C. July 31, 2009) (citing *United States v. Studifin*, 240 F.3d 415, 423-24 (4th Cir. 2001)).

Accordingly, Graham's motion to reduce his sentence [DE-256] is DENIED.

SO ORDERED. This the 2nd day of August, 2009.



JAMES C. FOX
Senior United States District Judge